

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

1. GREAT LAKES INSURANCE SE,)
vs.)
Plaintiff,)) Case No. CIV-22-00702-JD
vs.)) Judge Jodi W. Dishman
vs.)
2. FREDY VALLE d/b/a VALLE)
TRUCKING;)
3. SILVER STAR CONSTRUCTION)
COMPANY, INC.;)
4. TYLON MACKEY;)
5. ISRAEL JUAREZ;)
6. ORD TRUCKING, INC.)
7. ZURICH AMERICAN INS. CO.,)
vs.)
Defendants,)
vs.)
8. ZURICH AMERICAN INS. CO.,)
vs.)
Defendant/Third Party)
Plaintiff,)
vs.)
9. PROGRESSIVE NORTHERN INS.)
CO.,)
vs.)
Third-Party Defendant.)

JOINT STATUS REPORT REGARDING STAY OF PROCEEDINGS

Defendant/Third-Party Plaintiff, Zurich American Insurance Company (“**ZAIC**”), Plaintiff Great Lakes Insurance SE (“**Great Lakes**”), Defendant Silver Star Construction Company, Inc. (“**Silver Star**”), Defendant Tylon Mackey (“**Mackey**”), and Third-Party

Defendant Progressive Northern Insurance Company (“**Progressive**”) respectfully submit this Joint Status Report regarding Stay of Proceedings.

1. On January 3, 2024, ZAIC filed its Motion to Stay Proceedings Pending a Determination of Dispositive Motions in the Underlying Suit and Brief in Support (“**Motion to Stay**”). No party opposed the Motion to Stay. After a hearing on the Motion to Stay, the Court filed its Order on January 19, 2024, granting a temporary stay of these proceedings based upon the Court’s finding “that the issues in this case overlap significantly with the issues in the underlying suit.” The Order stayed this case until June 14, 2024 at 11:59 p.m., and ordered the parties to file, on or before June 12, 2024, a joint report as to the status of the underlying suit styled as *Tylon Mackey v. Israel Juarez, ORD Trucking, Fredy N. Valle, Sr. d/b/a Valle Trucking, and Silver Star Construction Company, Inc.*, Payne County District Court Case No. CJ-2020-233 (the “**Underlying Suit**”). The Order also instructed if the parties seek to extend the temporary stay, they should file a motion to extend the stay by June 12, 2024, demonstrating good cause and showing the progress in the Underlying Suit.

2. On April 8, 2024, Silver Star filed its Motion for Summary Judgment (“**MSJ**”) in the Underlying Suit. *See* Docket Report for Underlying Suit, attached hereto as **Exhibit 1**.

3. On April 9, 2024, Israel Juarez and ORD Trucking, Inc. filed their Motion for Partial Summary Judgment and Brief in Support Regarding Plaintiff’s Claim for Punitive Damages in the Underlying Suit (“**MPSJ**”). *See* Exhibit 1.

4. On April 15, 2024, ORD Trucking, Inc.'s counsel filed a Notice of Hearing, advising that its MPSJ would be heard before the Honorable Phillip C. Corley on June 6, 2024 at 1:30 p.m. *See Exhibit 1.*

5. On May 2, 2024, the Underlying Suit was stricken by Judge Corley from the disposition docket. *See Exhibit 1.*

6. On May 10, 2024, Mackey filed Plaintiff's Response and Objections to Defendant's [Silver Star's] Motion for Summary Judgment and Brief in Support. *See Exhibit 1.*

7. On May 20, 2024, Silver Star's counsel filed a Notice of Hearing, advising that its MSJ would be heard on June 6, 2024 at 1:30 p.m. *See Exhibit 1.*

8. On May 31, 2024, Silver Star filed its Reply in Support of its Motion for Summary Judgment. *See Exhibit 1.*

9. On June 6, 2024, the Court heard arguments on the MPSJ and the MSJ. Counsel for Mackey, Valle Trucking, Silver Star and ZAIC were in attendance. At the hearing, Mackey's counsel confessed the MPSJ. The Court issued his ruling that the MPSJ was sustained by agreement.

10. On July 1, 2024, an Order Granting Summary Judgment ("MSJ Order") was filed in the Underlying Suit, stating as follows:

On June 6, 2024, this matter came on for hearing on Defendant Silver Star Construction Company, Inc.'s Motion for Summary Judgment on Plaintiff's claims. Plaintiff appears by and through their attorney, Ryan Polchinski. Defendant Silver Star Construction Company, Inc. appears by and through its attorneys, Jennifer Struble and J. Chris Horton. Defendant Israel Juarez appears by and through his attorney, Mark Warman. Defendant ORD Trucking, Inc., appears by and through its attorney, Rodney Stewart. Defendant Fredy N. Valle Sr. d/b/a Valle Trucking appears by and through his attorney, Scott Kiplinger. After reviewing the pleadings in this case, the relevant legal authorities, hearing

the arguments of counsel, and being fully advised in the premises, the Court FINDS, ORDERS, ADJUDGES AND DECREES the Defendant Silver Star Construction Company, Inc.'s Motion for Summary Judgment is hereby GRANTED and SUSTAINED as to all claims alleged by Plaintiff Tylon Mackey against Defendant Silver Star Construction Company, Inc.

*See Order, July 1, 2024, attached as **Exhibit 2**.*

11. By Order filed on June 13, 2024, this Court extended the temporary stay of the instant action until Wednesday, July 31, 2024 at 11:59 p.m. The Court ordered the parties to file, on or before Monday, July 29, 2024, a joint report with updates as to the status of the Underlying Suit. The Order further instructed the parties to file any motion to extend the stay by Monday, July 29, 2024, demonstrating good cause and showing the progress in the Underlying Suit. *See Doc. No. 112.*

12. **ZAIC's Position:** In light of the Court's grant of summary judgment in favor of Silver Star as to its nonliability for the claims and injuries of Mackey, ZAIC is not seeking an extension of the stay of this declaratory judgment action. ZAIC submits that the MSJ ruling in the Underlying Suit resolves the issue of whether ZAIC, Great Lakes and/or Progressive have any duty to indemnify Silver Star for any judgment obtained against Silver Star by Mackey, as Silver Star was granted judgment as a matter of law as to its nonliability for the motor vehicle accident which resulted in Mackey's injuries and claims against the various parties in the Underlying Suit. Therefore, Silver Star will not be liable for any judgment to Mackey as a result of the underlying accident. The MSJ Order does not contain language to certify it for immediate appeal pursuant to Okla. Stat. tit. 12, § 994. Accordingly, no immediate appeal of the interlocutory MSJ Order is anticipated. ZAIC submits there is no need to await adjudication of all claims in the Underlying Suit to

proceed with determining the parties' rights and obligations in the instant action. The issue of whether Great Lakes and Progressive have (or had) a duty to defend Silver Star in the Underlying Suit remains at issue in this action. ZAIC respectfully requests that the Court lift the stay of the instant action and issue new deadlines in this matter for the parties to resubmit their Motions for Summary Judgment as to the rights and obligations of Great Lakes and Progressive to defend Silver Star in the Underlying Suit.

13. **Great Lakes' Position:** Based on the decision by the Payne County District Court, Great Lakes contends the issue of whether Great Lakes is obligated to defend, or indemnify Silver Star has been decided. Further, Great Lakes contends that the issue of whether it was obligated to defend Valle Trucking, or to indemnify Valle Trucking in the event Mackey succeeds in obtaining a judgment is still outstanding. Great Lakes does not request an extension of the stay but does request the Court enter a new Scheduling Order with enough time for the parties to resubmit their Motions for Summary Judgment in light of the developments in the Payne County case.

14. **Silver Star's Position:** As stated above, the Payne County District Court entered an Order granting summary judgment in favor of Defendant Silver Star Construction on July 1, 2024. Since that date, the Payne County District Court has not certified the Order for interlocutory appeal and Mackey has not requested the Court do so.

15. **Mackey's Position:** Mackey is appealing the Order from the Payne County District Court once all claims against all parties in the underlying action have been adjudicated.

16. **Progressive's Position:** The Payne County District Court's order summarily adjudicating Mackey's claims against Silver Star Construction Company ("Order") in the

underlying action is interlocutory and may be vacated anytime prior to the entry of a judgment in that matter. While the Payne County District Court has not certified the Order for interlocutory appeal, Mackey has previously announced his intent to appeal the Order and presumably intends to do so once all claims against all parties in the underlying action have been adjudicated. Unless this Court is prepared to extend the stay until judgment is entered *vis a vis* Silver Star in the underlying matter, the Court should enter a new scheduling order with sufficient time for the parties to submit dispositive motions in the case at bar.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Amy E. Hampton, hereby certify that on this 29th day of July, 2024, a true and correct copy of the foregoing document was served upon the following via the Court's electronic notification system:

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